:fore she had qualified as a mid-wife, 2nd defendant had amassed savings amounting to $5,000. Having considered the foregoing, and after some hesitation, I have come to the conclusion that 2nd defendant was a truthful witness, and I accept the version she gave of the acquisition of plaintiff's business. I accept that she dealt with 1st defendant as the principal and had no knowledge of his lack of title.

I am entirely satisfied that plaintiff appointed 1st defendant to manage the Kuala Lumpur branch of his business and that the latter had no power whatsoever to sell the business. I am equally satisfied that 1st defendant deliberately and fraudulently sold and transferred the business to 2nd defendant.

It follows that my conclusion is that two innocent parties have been the victims of a criminal act committed deliberately by a third party. The latter part of section 238 of the Contract Enactment (Cap 52) provides that :—

> "..... misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals".

In accordance with this provision, therefore, and following *Farquharson Brothers & Co. v. King & Co.*[1], I hold that 1st defendant's fraudulent dealings with plaintiff's property have not affected the latter's rights. I therefore give judgment for the plaintiff and declare that, as against both defendants, he is the owner of the business known as Wah Hing which, at the date of the trial, was carried on at No. 103 Sultan Street, Kuala Lumpur.

I cannot make the second declaration prayed in the plaint as plaintiff's tenancy agreement with the landlord of 103 Sultan Street was not proved and therefore, for all I know to the contrary, the term of the lease may have expired.

Plaintiff's costs will be taxed and paid by 1st defendant.

Order Accordingly.

POI ENG SIONG v. POI ENG SIEW AND ANOTHER.

[Orig. Civil Juris. (Callow, J.) June 17, 1948]
[Seremban — Civil Suit No. 5 of 1948]

Courts (Restriction of Civil Jurisdiction) Ordinance 1946, s. 3 (1) (e) and Courts (Restriction of Civil Jurisdiction) (Amendment) Ordinance, 1947, Ss. 2 (c), (d), (e), 3 (2) — Jurisdiction — Whether case involves any question or matter relating to Japanese currency — Meaning of "relating to or involving."

This was an application for an order that the proceedings in this suit which concerned the administration of an estate be stayed on the grounds that they disclose no cause of action triable by the Court.

Held, that it was clear from the plaint in this case that numerous matters would arise, as regards the executor's administration of the estate, which are connected with Japanese currency; that therefore the suit involved questions or matters relating to Japanese currency and therefore the Court had no jurisdiction to hear and determine the action.

CIVIL SUIT.

M. N. Cumarasamy for the Plaintiff.

R. V. Rintoul for the Defendants.

Callow, J. : — This is an application for an Order that the proceedings in the suit be stayed on the grounds that they disclose no cause of action triable by the Court having regard to the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946.

The suit concerns the administration of a large estate. The plaintiff is a beneficiary, and the two defendants are the Executors and Trustees. In his plaint the plaintiff prays :—

(1) that the defendants be removed from the administration of the estate of the deceased,
(2) that the movable and immovable property of the estate of the deceased be administered under the direction of this Court,
(3) that all directions for the taking of accounts be given,
(4) that a Receiver and Manager of the estate of the deceased be appointed,
(5) that such further or other relief as the nature of the case may require be given, and
(6) that costs be awarded to the plaintiff.

Thus it is apparent that the real issue is whether or no the defendants should be removed from the administration of the estate.

But the defendants have put forward this preliminary point, and argue that in consequence of section 3 (1) (e) of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, this Court lacks the necessary jurisdiction to hear and determine the action.

Section 3 (1) (e) of the Courts (Restriction of Civil Jurisdiction) Ordinance reads :—

> 3. (1) Notwithstanding the provisions of the Courts Ordinance, 1946, no Court constituted thereunder shall, during the continuance in force of this Ordinance, have jurisdiction to hear and determine any suit, action or other proceeding whatever —
> (e) in which any question or matter relating to or involving Japanese currency or any currency issued by any Japanese authority after the 7th day of December, 1941, arises or falls to be considered.

Mr. Rintoul for the defendants argued that certain paragraphs of the plaint, namely 10 (a), (b), (c), (d), (e), (h), (i), (k) and 11 must involve questions or matters relating to or involving Japanese currency.

Mr. Cumarasamy for the plaintiff replied that it was not sought to confirm or set aside any transactions in Japanese currency. Certain items of expenditure are challenged; certain items are alleged to have been undisclosed in the Estate Duty Affidavit; and general devastavit is charged. But no decision is sought as to the relative values of Japanese currency at any particular time. There are, admitted learned Counsel, matters which may arise if account is ordered; but should this occur then a stay may be granted if by that time the Debtor and Creditor (Occupation Period) Bill remains unenacted.

Thus the immediate issue is for this Court to decide whether this is a suit which involves any question or matter relating to Japanese currency.

Before going further it may be well to consider the intention of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946. The objects and reasons of the bill were set out as follows :—

> The Moratorium Proclamation which was promulgated during the period of British Military Administration proclaimed a moratorium with regard to debts and also prohibited dealings in land. During that period no civil Courts were sitting and, therefore, no special legislation was then necessary to restrict Courts exercising jurisdiction in those matters.
>
> On the re-opening of the Civil Courts, it is necessary to prevent proceedings being instituted in any Court which would be likely to prejudice the moratorium mentioned above or the provisions of subsequent legislation, which it is proposed to enact, dealing with dispositions of land during the period of Japanese occupation, and also with proceedings in which any question relating to Japanese currency or currency issued by the Japanese during that period arises.
>
> Accordingly, while the moratorium continues and until the proposed legislation is enacted, it is necessary that the civil jurisdiction of the Courts should be restricted. This Bill will effect that purpose.
>
> The two crucial dates in the Bill, that is to say the 7th December, 1941, and the 30th September, 1945, have been chosen because —
>
> (a) the 7th December, 1941, was the day before the Japanese landed in the Malay Peninsula; and
>
> (b) by the 30th of September, 1945, the British Military Administration had assumed effective control over the whole of the Malay Peninsula.

It would seem, therefore, that the Moratorium Proclamation was chiefly concerned with debt and land, but when the Civil Courts re-opened the restriction was carried further by the phrase "and also with proceedings in which any question relating to Japanese currency or currency issued by the Japanese during that period arises".

Now it is clear from the plaint that numerous matters will arise which are *connected* with Japanese currency. Is that the same as "relating to Japanese currency"? Obviously paragraph 10(c) (d) (e) (h) (i) and paragraph 11 must *concern* and refer to Japanese currency; Mr. Rintoul argued that they are matters involving Japanese currency. Mr. Cumarasamy replied that the plaintiff alleges wrongful omissions and commissions in estate transactions, the main issue being the unfitness of the defendants to administer the estate; if account be ordered then Japanese currency values must arise, but until or unless that happens the action does not extend beyond finding of fact as to whether or no certain entries and transactions are true or false. Can this be decided without points arising in relation to Japanese currency?

On the 12th of April, 1947, the Courts (Restriction of Civil Jurisdiction) (Amendment) Ordinance, 1947, was enacted. It amends sub-section (c) of section 2 of the principal Ordinance and adds two further sub-sections (d) and (e), and a purpose of this contained in the Objects and Reasons of the Bill is to enable proceedings to be brought which seek the appointment of a receiver or receiver and manager. This plaint includes a prayer for the appointment of a receiver and manager, so if that had been the only prayer it would appear the action should proceed. But do the other prayers involve or relate to Japanese currency?

The same amending Ordinance (17 of 1947) added a new sub-section —

> 3. (2) Where a suit action or other proceeding has been instituted in any Court constituted as aforesaid and it appears at any time that the Court has, by reason of any provision of this Ordinance, no jurisdiction to hear and determine the same or any question or issue arising therein, the Court may make an order staying the suit, action or other proceeding until such time as the Court shall have jurisdiction to hear and determine all questions and issues arising therein, or may proceed to hear and determine such questions and issues as it has jurisdiction to hear and determine and make an order staying as aforesaid the hearing and determination of any remaining question or issue.

This sub-section gives the Court power to separate and divide the plaint, and to proceed to hear and determine such questions and issues as may be held clearly within jurisdiction, and not restricted by the Ordinance (15 of 1946).

Mr. Rintoul for the defendants submitted that in this action such procedure was impracticable. He argued that the plaintiff seeks the removal of the defendant trustees, and that all other prayers are ancillary to that main question; to determine the issue evidence relating to Japanese currency must receive consideration.

It certainly seems arguable, in respect of the transaction set out in paragraph 10(i) of the plaint for example, that the price realised on the sale of the land would vary considerably in value if reference is to Japanese or local currency. Some interrogations were put by the defendants to the plaintiff and are attached to the affidavit dated 20th March, 1948, but they are not very explicit; in any event, it would seem that the defendants being the executors and trustees, and not the plaintiff, could better explain the form and currency used. And quite what was the object of inquiring whether monies apparently used in 1947, vide interrogatory referring to paragraph 10(m), refer to Japanese currency, is not clear. The reply is equally ambiguous. Interrogations are most valuable in preliminary proceedings; I wish they were made use of to a much greater extent.

It would be, of course, highly desirable to proceed with this action with the minimum of delay, but besides the allegations in the plaint, I understand that certain assets for reason of their nature, could not be disclosed to the Japanese invaders. There is a large loan free of interest to His Majesty's Government, and a further large investment in War Loan; obviously disclosure of either of these items would have placed the family in dire peril.

This situation affected the valuation of the estate, and I observe the death duties were paid *at the time of* Re-occupation. Now a further valuation has been made and is being met, which will naturally involve in due course considerable adjustment in the estate accounts, for the first payment was in Japanese currency and at a time when such currency had little value.

Mr. Rintoul insists that satisfactory progress cannot be made in this action without constant reference to Japanese currency payments. I think there can be no doubt as to this, but would such figure references of account be such as to require these proceedings to be stayed by virtue of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946? To endeavour to separate the issue is resisted by the plaintiff, and the suggestion met with no response by the defendants. I also suggested the appointment of a receiver pending the promulgation of the Debtor and Creditor (Occupation Period) Ordinance 1948, and to this the plaintiff assented, but the defendants objected on the grounds of expense.

It is necessary, therefore, as agreed by Counsel, for the Court to decide whether matters relating to or involving Japanese currency will arise or fall to be considered.

Now what is meant by "relating to" and "involving"? *Chambers* 20th Century Dictionary construes "relate" as "to have reference: to refer"; and the meaning of "involve" is given as "to implicate: to include". Dictionary definitions have been deprecated (*Maxwell* on Interpretation of Statutes, 9th Edition, page 24), but here I am constrained to interpret and apply to these proceedings the meaning of two very ordinary prepositions in the form of participles "relating to or involving".

It seems not unlikely that the original intention of the legislation promulgated by the British Military Administration was to restrict temporarily — until the enactment of the Debtor and Creditor (Occupation Period) Ordinance, 1948, which cannot now be long delayed — the jurisdiction of this Court only in those suits referring to land and debt, but the words "relating to or involving" used in the Ordinance cover a far wider field.

It is the duty of this Court to give the expression it's ordinary meaning, and not to entertain speculation as to what the legislature intended, or to scan it's policy (*Maxwell* on Interpretation of Statutes, 9th Ed. page 4).

I am not disturbed as to the construction of the phrase "arises or falls to be considered". I do not like it, for although it may be possible to hold that a question or matter arises, when does it fall? Or does a question arise and a matter fall? However it is a phrase in general use, and there can be no real difficulty of interpretation. Counsel made no reference to it.

I have no doubt that in this suit questions or matters relating to or involving Japanese currency must arise or fall to be considered.

I hold, therefore, that this Court lacks the necessary jurisdiction to hear and determine this action, and the suit is stayed accordingly.

I see, however, no reason why the defence should not be filed, and subject to argument on this point, the pleadings should be settled within 14 days.

Order Accordingly.

SIM AH MAN v. PUBLIC PROSECUTOR AND WONG PIANG SENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) July 3, 1948]
[Johore Bahru — Criminal Appeals Nos. 4 & 5 of 1948]

Weights and Measures Enactment S. 18—Charge of carrying excess weight above that allowed in haulage permit—Onus of proving correctness of machines and of method of weighing lorry.